United Food and Commercial Workers Union Local 1776 a/w United Food and Commercial Workers International Union, AFL–CIO, CLC (Carpenters Health & Welfare Fund) *and* Metropolitan Regional Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL–CIO. Case 4–CC–2210

July 12, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

On February 2, 1999, Administrative Law Judge James L. Rose issued the attached decision. The General Counsel filed exceptions and a supporting brief and the Respondent filed cross-exceptions and a brief in support and in response to the General Counsel's exceptions. Thereafter, the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions, and to adopt the recommended Order.

The complaint alleges that the Respondent (the Union) violated Section 8(b)(4)(i) and (ii)(B) of the Act[1] by picketing the July 16, 1998 meeting of the Metropolitan Regional Council of Carpenters (the Council), a neutral employer, with an object of forcing or requiring the Council "and other persons to cease using, selling, handling, transporting, or otherwise dealing in the services of the [Carpenters Health & Welfare] Fund [(the Fund)], and to cease doing business with the Fund."[2]

As explained in *Service Employees Local 87 (Trinity Maintenance),* 312 NLRB 715, 742–743 (1993):

> There are essentially two elements necessary to establish a violation of Section 8(b)(4)(i) and (ii)(B) of the Act. First, a labor organization must engage in conduct which induces or encourages individuals to engage in a strike or refusal to perform services for their employer or which threatens, coerces, or restrains any person. Further, [an] object of the foregoing conduct must be to force or require any person to cease dealing with or doing business with any other person.

For the reasons set out below, we agree with the judge that the two elements necessary to establish a violation of Section 8(b)(4)(i) and (ii)(B) of the Act, unlawful conduct and an unlawful object, are absent here and that therefore the complaint must be dismissed.[3]

The facts, in brief, are as follows. The Fund is a multiemployer fringe benefit trust fund created pursuant to Section 302 of the Act. It is jointly administered by the Council and various employers who are signatory to collective-bargaining agreements with the Council. Francis Laffey, the assistant executive secretary-treasurer/business manager of the Council explained at the hearing that the Fund "administer[s] our benefits to our membership." (Tr. 16.) The Fund and the Council occupy adjacent buildings on Spring Street in Philadel-

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[1] As relevant here, Sec. 8(b)(4)(i) and (ii)(B) of the Act makes it unlawful for a labor organization or its agents,

> (4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—
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> . . . .
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> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person

[2] Specifically, par. 6 of the complaint alleges that:

> (a) On or about July 16, 1998, Respondent engaged in picketing at the Carpenters Regional Council's Office.
>
> (b) By the conduct described above in subparagraph (a), Respondent induced and encouraged individuals employed by Carpenters Regional Council and other persons engaged in commerce or in an industry affecting commerce to refuse to perform services, and has threatened, coerced and restrained Carpenters Regional Council and other persons engaged in commerce or in industries affecting commerce.
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> (c) An object of Respondent's conduct set forth above in subparagraphs (a) and (b), had been to force or require Carpenters Regional Council and other persons to cease using, selling, handling, transporting or otherwise dealing in the services of the Fund, and to cease doing business with the Fund.

[3] In sec. III,B of his decision, the judge accurately quoted the Court's statement in *DeBartolo Corp. v. Florida Gulf Coast Trades Council*, 485 U.S. 568, 578 (1988), that "'induc[ing] or encourag[ing]' employees of the secondary employer to strike is proscribed by Sec. 8(b)(4)(i). But more than mere persuasion is necessary to prove a violation of Sec. 8(b)(4)(ii)(B): that section requires a showing of threats, coercion, or restraints." Our dissenting colleague does not argue with the accuracy of the judge's quotation. Rather, he asserts that "picketing of a neutral employer is generally unlawful." But the Court recognized no such thing. What the Court *did* say, in the full passage that our colleague quotes in part, was that "[t]here is even less reason [than in *NLRB v. Fruit Packers*, 377 U.S. 58 (1964) (*Tree Fruits*)] to find in the language of Sec. 8(b)(4)(ii)(B), standing alone, any clear indication that handbilling, without picketing, 'coerces' secondary employers." 485 U.S. at 580. We are not persuaded that this statement amounts to a recognition by the Court that picketing generally constitutes unlawful coercion, as opposed to a recognition that it can be coercive. The issue of whether picketing is coercive must be determined on a case-by-case basis. In the present case, we find, for the reasons set out below, that the picketing was not coercive.

phia. Ed Coryell, the cochairman of the Fund, is also the executive secretary-treasurer/business manager of the Council. Laffey testified without contradiction that Coryell was elected to his position by the delegates to the Council. (Tr. 29.)

According to Laffey's uncontroverted testimony, there are approximately 60 delegates to the Council. They are elected in their local unions and attend the Council's monthly meetings. Each local union is entitled to a certain number of delegates depending on the size of its membership. Approximately two thirds of the delegates are rank-and-file employees who are active in the Union and the remaining third of the delegates are full-time union representatives. The delegates, as well as the full-time employees of the Council who are its "officers and representatives," attend the Council's monthly meetings. (Tr. 20–21.) The Council meetings are scheduled for 7 p.m., some 2 hours after the Council's business offices close for the day. (Tr. 22.)

The Union began organizing the Fund's employees in the fall of 1996. In opposing the Union's organizing attempt, the Fund committed various unfair labor practices.[4] However, the Union was eventually certified as the exclusive collective-bargaining representative of the Fund's employees and the parties then began negotiating for a contract. When the Union felt that there was no movement in the negotiations, it decided to picket and handbill the Council's July 16, 1998 monthly meeting to bring this fact to the attention of the delegates and to embarrass Coryell by pointing out that the Fund had committed unfair labor practices and was not negotiating with the Union. To achieve this purpose, the picketers and handbillers urged the delegates to go into the council meeting and ask Coryell about these issues. No delegate was requested to withhold his services from his employer.

Based on these facts, we find that the Union's picketing and handbilling prior to the July 16, 1998 meeting of the Council was not conduct unlawful under Section 8(b)(4)(i)(B) of the Act. There is no evidence that the picketing and handbilling "was designed to induce or encourage any neutral employer's employees to refuse to work." *Service Employees Local 254 (Women & Infants Hospital),* 324 NLRB 743 (1997). The purpose of the picketing was to encourage the *delegates* to go into the July 16, 1998 meeting of the Council and ask Coryell, as the cochairman of the Fund, why the Fund had not reached a collective-bargaining agreement with its union-represented employees. No delegate was requested to withhold his services from his employer.[5] Thus, it is clear that the Union picketed and handbilled to influence these individuals in their capacity as delegates to the Council rather than as employees of neutral employers (including not only the Council itself but also the employers of delegates who were rank-and-file members).

We further find that the picketing at issue here was not unlawful under Section 8(b)(4)(ii)(B) because it did not "coerce or restrain" the Council or any other neutral employer. As explained above, the picketers neither sought to "induce or encourage" the delegates to withhold their services from their respective employers, nor, in fact, did any delegates actually do so. Therefore, the picketing did not "coerce or restrain" the Council, or any other neutral employer, within the meaning of Section 8(b)(4)(ii)(B) of the Act. Cf. *Los Angeles Newspaper Guild Local 69*, 185 NLRB 303, 305 (1970), enfd. 443 F.2d 1173 (9th Cir. 1971) (Board found that unions violated Sec. 8(b)(4)(ii)(B) by coercing or restraining the secondary employer because the unions had successfully induced its employees to refuse to continue to work).

Our dissenting colleague would find, in effect, that all picketing at a secondary site, no matter what the circumstances, is inherently coercive. He argues that all picketing is coercive, the Union picketed the Carpenters (i.e., the Council), the Council is a neutral employer, and therefore the Union restrained or coerced a neutral employer in violation of Section 8(b)(4)(B). We reject his syllogism. Section 8(b)(4)(ii)(B) does not outlaw picketing at a secondary site per se. See *NLRB v. Fruit & Vegetable Packers Local 760 (Tree Fruits Labor Relations Committee),* 377 U.S. 58, 68 (1964) (union's secondary picketing of retail stores confined to persuading customers to cease buying the product of primary employer did not violate Section 8(b)(4)(ii)(B)).[6] As the Court in *Tree Fruits* stated:

> When Congress meant to bar picketing *per se*, it made its meaning clear; for example, § 8(b)(7) makes it an unfair labor practice, "to picket or cause to be picketed . . . any employer. . . ." In contrast, the prohibition of § 8(b)(4) is keyed to the coercive nature of the conduct, whether it be picketing or otherwise.

Thus, even where the employees of a primary employer (the Fund) may be reached at the primary's prem-

[4] See *Carpenters Health & Welfare Fund*, 327 NLRB 262 (1998), enfd. mem. 202 F.3d 254 (3d Cir. 1999).

[5] As explained above, the picketing here occurred after the Council's offices were closed for the day. Therefore, the employees of the Council itself, i.e., those who worked in the Council's building on Spring Street, would not have been present or affected by the picketing.

[6] Our dissenting colleague claims that *Tree Fruits* is inapposite because, while the picketing there, as here, took place at a neutral site, the union there limited its picketing to the primary. Yet, as explained below (see especially fn. 7), that is precisely what happened here.

ises, picketing at the premises of a neutral, secondary employer (here the Council) is not per se a violation of the Act. The test for determining whether such picketing is lawful is the objective of the secondary activity, as gleaned from the surrounding circumstances. As the U.S. Court of Appeals for the District of Columbia Circuit stated in *Seafarers International Union v. NLRB*, 265 F.2d 585, 591 (D.C. Cir. 1959):

> The mere fact that [the neutral, secondary employer] felt some pressure from the picketing of the [primary employer's leased ship on the neutral's premises] is not dispositive of the problem under Section 8(b)(4). The critical consideration is that the pressure thus put on [the neutral] was not different from that felt by servicers or suppliers under the most ordinary circumstances when a customer of theirs is picketed.
>
> The question which remains is: Did the Union intend a more direct effect on [the neutral]? The statute makes the "object thereof" the critical factor. . . . In the absence of admissions by the Union of an illegal intent, the nature of acts performed shows the intent. All the concrete evidence negatives an objective on the part of the . . . Union to force or require [the neutral] to do anything.[7]

The evidence in this case yields the same conclusion: the Union intended no "more direct effect" on the neutral Council. The statements on the picket signs and leaflets (set out in full in the attached judge's decision) are clearly directed at Ed Coryell in his capacity as co-chairman of the Fund, the primary employer. No delegate to the Council (or any other employee) was asked to withhold his services from the Council;[8] indeed, the delegates were encouraged to attend the scheduled Council meeting and simply to ask Coryell about the status of the negotiations between the Fund and the Union. On these facts, we cannot conclude that the Union engaged in restraint or coercion within the meaning of Section 8(b)(4)(ii)(B).

Finally, we agree with the judge that the picketing was not unlawful under Section 8(b)(4)(B) because an object of the picketing was not, as alleged in the complaint, to force or require any person (i.e., the Council) to cease dealing with or doing business with any other person (i.e., the Fund), as proscribed by that Section. As discussed, through its picketing and handbilling of the delegates, the Union hoped that the delegates would question and embarrass Coryell about the Fund's negotiations with the Union. The delegates were in a unique position to request an explanation of the Fund's negotiations with the Union because they had elected Coryell to his position as executive secretary-treasurer of the Council and therefore Coryell was presumably accountable to them. The object, however, was not to have the Council cease doing business with the Fund. Rather, we find that the ultimate object of the picketing was to influence Coryell, as the co-chairman of the Fund, the *primary* employer, to improve the Fund's relationship with the Union. That object cannot be translated into "a cease dealing with or doing business with object" within the meaning of Section 8(b)(4)(B).[9] Therefore, we find that the picketing

[7] Our dissenting colleague would distinguish *Seafarers v. NLRB* from this case on the grounds that the union in that case picketed a neutral site where *both* the neutral *and the primary employer* were present. But our colleague acknowledges that Coryell wore two hats here, one as cochairman of the *primary employer* Fund. Thus, the primary employer Fund, in the person of Coryell, *was* present at the neutral site of the Council here.

[8] Our colleague incorrectly asserts that this fact is irrelevant to our finding that the Union did not violate Sec. 8(b)(4)(ii)(B). Had the Union, however, successfully induced or encouraged the delegates to, or employees of, the Council to withhold their services from the Council in violation of Sec. 8(b)(4)(i), that would have constituted evidence of coercion of the Council in violation of Sec. 8(b)(4)(ii). *Teamsters Local 315 (Santa Fe),* 306 NLRB 616, 631 (1992) (inevitable consequence of successfully inducing or encouraging employees of secondary employer to refuse to perform their work tasks, within meaning of Sec. 8(b)(4)(i), was to restrain or coerce secondary employer within meaning of Sec. 8(b)(4)(ii)); *Plumbers Local 398 (Robbins Plumbing)*, 261 NLRB 482, 487 (1982) (successfully inducing employee of neutral employer to refrain from crossing picket line to perform work tasks, within meaning of Sec. 8(b)(4)(i), operated as unlawful restraint of secondary employer, within meaning of Sec. 8(b)(4)(ii)); *Teamsters Local 126 (Ready Mixed Concrete),* 200 NLRB 253, 254 fn. 6 (1972) (Board and courts have uniformly held that successful inducement or encouragement of workmen to cease performing services necessarily restrains or coerces their employer). Here, however, there was no attempt, successful or otherwise, to induce or encourage any delegate to, or employee of, the Council to withhold his services from the Council, and there is no other evidence of restraint or coercion.

[9] In reaching this conclusion, we are mindful that, as explained in *Service Employees Local 87 (Trinity Maintenance)*, 312 NLRB 715, 743:

> while a cease dealing with or doing business with object is, of course, required for finding a violation, it is not necessary that such be "the sole object" of the allegedly unlawful conduct. . . . it is no less a violation of Section 8(b)(4)(B) of the Act for a labor organization to disrupt the business of an unoffending neutral employer, which has no business relationship with the primary employer, in the hope that said neutral will be pressured into interceding in a labor dispute between the labor organization and the primary employer.

In finding that the object of the picketing was not unlawful under Sec. 8(b)(4)(B), we reject our dissenting colleague's assertion, based on the quoted language from *Trinity Maintenance*, that the picketing was undertaken "'in the hope that said neutral [i.e., the Council] will be pressured into interceding in a labor dispute between the labor organization and the primary employer [i.e., the Fund].'" First, paraphrasing *Trinity Maintenance*, the picketing has in no way "disrupt[ed] the business of [the] unoffending neutral employer." Second, the object of the picketing—as our colleague concedes—was to put pressure on Coryell as the representative of the *primary* employer Fund. That the pressure was exerted on him when he was present at the Council meeting is without significance, for we fail to see what "pressure" the picketing

did not violate Section 8(b)(4)(B) on this basis also.[10]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and the complaint is dismissed.

CHAIRMAN HURTGEN, dissenting in part.

I conclude that Respondent UFCW violated Section 8(b)(4)(ii)(B).

Respondent represented certain employees of the Fund. It had a bargaining dispute with the Fund. The Fund was established pursuant to a collective-bargaining agreement between the Carpenters and certain employers. Although Coryell was secretary-treasurer of the Carpenters and was cochairman of the Fund, it is clear that the Fund was an entity separate and apart from the Carpenters.[1] Accordingly, my colleagues do not quarrel with the conclusion that the Carpenters Union was a neutral with respect to the dispute between Respondent and the Fund.

Thus, this case involves picketing of a neutral entity. My colleagues argue that the picketing was not restraint or coercion. They rely on *DeBartolo v. Florida Coast Building Trades Council*, 485 U.S. 568 (1988), in support of their conclusion. However, that case drew a distinction between handbilling and picketing, and held only that the former was not restraint or coercion. It said that "handbilling, *without picketing* [does not] coerce secondary employers." Id. at 580. (Emphasis added.) By contrast, picketing of a neutral employer is generally unlawful. Indeed, the only case cited for the proposition that picketing of a neutral is not unlawful is *Tree Fruits*.[2] That case is not apposite here. In that case, the union limited its picketing to the primary product.[3]

My colleagues say that picketing at a neutral premise is not per se a violation of the Act. That argument sets up a straw man. I do not contend that such picketing is per se unlawful. I do maintain that, in the instant case, picketing of a neutral in order to accomplish a labor objective elsewhere is unlawful.

My colleagues also argue that no employee of the Carpenters was asked to withhold his services from the Carpenters. That observation would be relevant under Section 8(b)(4)(i). However, the instant allegation is 8(b)(4)(ii). Under subsection (ii), it is not necessary to show that the picketing sought to induce employees to strike. It is sufficient to show that Respondent's picketing of the neutral Carpenters was restraint or coercion.

As to the above point, my colleagues correctly say that a successful effort to induce a strike against a neutral in violation of Section 8(b)(4)(i) will restrain and coerce the neutral in violation of Section 8(b)(4)(ii). However, it does not follow that the absence of Section 8(b)(4)(i) conduct (successful or otherwise) means that there is no violation of 8(b)(4)(ii). Section 8(b)(4)(ii) is a separate provision and can be violated even if there is no violation of Section 8(b)(4)(i).

With respect to object, it is clear that the purpose of Section 8(b)(4)(B) is to shield neutral employers "from pressures in controversies not their own."[4] In the instant case, the Carpenters Union was a neutral, and was thus entitled to the protection of Section 8(b)(4)(B). Despite this, my colleagues argue that the picketing was not for a proscribed object. I disagree. The picketing was designed to place pressure on the neutral Carpenters in order to have Coryell (as Fund cochairman) acquiesce to Respondent's bargaining demands on the primary employer (the Fund). The Board has held that an unlawful object is present where a union pickets a neutral "in the hope that said neutral will be pressured into interceding in a dispute between the labor organization and the primary employer."[5]

My colleagues say that there was no "cease-doing-business" object. I disagree. In *NLRB v. Operating Engineers Local 825,* 400 U.S. 297 (1971), the Supreme Court reversed a ruling by the D.C. circuit. The circuit court had found that the union picketed the general contractor "to use its influence with the subcontractor to change the subcontractor's conduct, not to terminate their relationship." The circuit court reasoned that this was not a "cease-doing business" object. 410 F.2d at 10. The Supreme Court disagreed. The Court said:

> That court read the statute as requiring that the union demand nothing short of a complete termination of the

was "designed to place" on the neutral Council. The picketers never requested the delegates to do anything more than question Coryell in his capacity as a primary about the Fund's dealings with the Union. Under these facts, we can see no basis for distinguishing between the picketing conducted and picketing that might have been conducted at the Fund's offices. The Board must not substitute its judgment as to the "propriety and adequacy" of a union's attempts to persuade for an analysis of whether the conduct is secondary or lawful primary activity. See, e.g., *NLRB v. Teamsters Local 968*, 225 F.2d 205, 209–210 (5th Cir. 1955).

[10] In light of these findings, we find it unnecessary to pass on the judge's finding that the Council is not a neutral to the dispute between the Respondent and the Fund.

[1] See *NLRB v. Amax Coal*, 453 U.S. 322 (1981).

[2] *NLRB v. Fruit Packers*, 377 U.S. 58 (1964).

[3] As noted infra, Coryell was present at the site in his capacity as a neutral. Further, even assuming that he was also there in his capacity as a primary, this is clearly not a *Tree Fruits* case, i.e., where the picketing seeks a boycott of a primary product.

[4] *NLRB v. Denver BCTC*, 341 U.S. 675, 692 (1951).

[5] *Service Employees Local 87 (Trinity Maintenance),* 312 NLRB 715, 743 (1993).

> business relationship between the neutral and the primary employer. Such a reading is too narrow. [400 U.S. at 304.]

The Supreme Court also noted that picketing of any employer has disruptive effects. However, the Court noted that picketing of a primary employer is expressly sanctioned by the Act, while picketing of a neutral is not.

In the instant case, there was a business relationship between the Carpenters and the Fund, and the Union's picketing was designed to use that relationship (through the person of Coryell) to affect the labor relations of the Fund.

Seafarers v. NLRB, 265 F.2d 585 (D.C. Cir. 1959), is clearly distinguishable. In that case, the union picketed a site where both the neutral employer *and the primary employer* were present. The union's signs were aimed at the primary employer. Employees of neutrals honored the picket line. However, this fact did not establish a violation. By contrast, in the instant case, the picketing is at wholly neutral premises.[6] And, at least *an* object thereof was to place pressure on the neutral Carpenters in order to have Coryell (as Fund chairman) acquiesce to the Union's demands.

I recognize that Coryell wore two hats—one as agent for the primary and another as agent for the neutral. However, the Union could not enmesh the neutral simply because one of its agents was also an agent of the primary.

For all of the above reasons, I conclude that picketing of neutral Carpenters was unlawful under Section 8(b)(4)(ii)(B).

Lea F. Alvo-Sadiky, Esq., for the General Counsel.
Stephen J. Holroyd, Esq., of Philadelphia, Pennsylvania, for the Charging Party.
Laurence M. Goodman, Esq., of Philadelphia, Pennsylvania, for the Respondent.

DECISION

STATEMENT OF THE CASE

JAMES L. ROSE, Administrative Law Judge. This matter was tried before me at Philadelphia, Pennsylvania, on December 16, 1998, on the General Counsel's complaint which alleged that the Respondent engaged in picketing of the Charging Party in violation of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act. The Respondent generally denied that it committed any violations of the Act.

On the record[1] as a whole, including my observation of the witnesses, briefs, and arguments of counsel, I make the following findings of fact, conclusions of law, and recommended Order.

I. JURISDICTION

At all material times, Carpenters Health & Welfare Fund (the Fund) has been fringe benefit fund organized under Section 302 of Act, and has been engaged in providing health insurance for employees of participating employers, during the course of which it annually receives contributions in excess of $50,000 from employers outside the Commonwealth of Pennsylvania, which employers annually purchase and receive goods valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania. The Fund is an employer engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent, United Food and Commercial Workers Union Local 1776 a/w United Food and Commercial Workers International Union, AFL–CIO, CLC (the Union) is admitted to be, and I find is, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

As noted in an earlier case involving these parties,[2] the Fund is a typical Section 302 fringe benefit trust established by members of the Metropolitan Regional Council of Carpenters. Though it has an equal number of employee and employer trustees, the employee trustees appear to have more presence in its day-to-day operations. Thus, the Fund's offices are in a building adjoining the one in which various constituent unions of the Regional Council have offices, including Edward Coryell, the executive secretary-treasurer of the Regional Council and co-chairman of the Fund's trustees.

Following a contested organizing campaign among the Fund's employees, during which the Fund committed unfair labor practices, the Union was certified as their exclusive bargaining representative. There followed negotiations but, at least from the Union's viewpoint, there was no movement. Thus it was decided to bring this fact to the attention of delegates to the Regional Council. According to the credible testimony of Erin Martino, the Union's representative, it was felt necessary to "get the message to the rank and file members and to the delegates about what was happening." They wanted to embarrass Coryell by noting that the Fund had engaged in unfair labor practices and was not bargaining.

Thus on the evening of July 16, 1998, certain employees of the Fund and representatives of the Union picketed the offices of the Regional Council just prior to its monthly meeting and at a time when delegates to the Regional Council were arriving. There were pickets at both the entrance to the Regional Council

[6] Although Coryell was on the premises, he was there in his capacity as an officer of the neutral Carpenters. Thus, his presence did not change the character of the neutral premises.

[1] The General Counsel's motion to correct the transcript throughout to reflect the correct spelling of Robert Pierce and Edward Chew is granted.

[2] *Carpenters Health & Welfare Fund*, 327 NLRB 262 (1998).

building and to the parking lot used by the Regional Council. Neither of these locations was allowed to be used by employees of the Fund.

Picket signs read: "ED! DON'T BE A SCAB!" "HELP US NAIL DOWN A CONTRACT" "DIGNITY RESPECT JUSTICE ED DO YOU KNOW THE MEANING" "DIGNITY JUSTICE RESPECT *UNION*" "HELP US BUILD BETTER LIVES" "UNION WORKERS (the other words are unreadable)."

The picketers also handed out flyers reading:

DELEGATES, JUST ASK ED…

Are the women and men who administer you union benefits union?

Why would the Health and Welfare Union Fund *(Ed Coryell is the Co-Chairman)* stand in the way of workers organizing?

Why is the Fund (*Ed is the Co-Chair)* denying the workers who administer your UNION-earned benefits a UNION contract?

How could A labor organization fire someone for being PRO UNION?

How can the Fund *(Ed is the Co-Chair)* believe that Union business Representatives should only have access to workers they represent When and AGENT OF MANEGMENT (sic) is *watching* and *listening?*

How can the Fund *(Ed is the Co-Chair)* believe that SENIORITY should not be in any way included or referred to in our Collective Bargaining Agreement?

That is like saying a Journeyman and an Apprentice are the same

RIDICULOUS!

Does the Fund *(Ed is the Co-Chair)* want SCABS administering your UNION benefits? DO YOU?

People throughout the Labor Movement have been asking Ed these and other questions, his response we are told has been "you don't know the facts!"

What FACTS could possibly justify UNION-BUSTING? OBVIOUSLY NONE!

We just want a fair contract.

DON'T LET ED RAT OUT YOUR PROUD UNION!

United Food and Commercial Workers Local 1776

LABOR DONATED

Such conversations as the picketers had with delegates were to the effect that this was not a picket line and the delegates should go to the meeting and query Coryell about why the Fund was not reaching a collective-bargaining agreement with its union-represented employees.

B. Analysis and Concluding Findings

The General Counsel alleges that by this conduct, the Respondent "induced and encouraged individuals employed by Carpenter Regional Council and other persons engaged in commerce or in an industry affecting commerce to refuse to perform services and has threatened, coerced and restrained Carpenters Regional Council and other persons engaged in commerce or in industries affecting commerce." On brief, counsel for the General Counsel states the issue to be: "Whether Respondent violated Section 8(b)(4)(i) [and] (ii)(B) of the Act on July 16, 1998, by wearing picket signs while otherwise lawfully handbilling at the offices of the Regional Council where an object is to force or require the Regional Council to cease doing business with the Fund?"

The General Counsel argues that because certain of the individuals involved wore signs in addition to passing out the flyers, this was picketing of a secondary employer and unlawful. The Respondent maintains that this was not picketing because delegates to the Regional Council were urged to go into the meeting—that to be "picketing" there must be an object to induce employees from crossing and going into their place of business. Wearing signs and patrolling is universally accepted as "picketing." Object has to do with the legality of the picketing, not the fact of it. Thus, I agree with the General Counsel that the Respondent engaged in picketing, notwithstanding that the stated message to delegates was to go into the meeting and question Coryell.

However, picketing is not per se violative of Section 8(b)(4). In order to find a violation, it must first be shown that the picketing was designed to induce or encourage employees of a neutral to refuse to work. Where such an object is absent, there is no violation of Section 8(b)(4(i)(B). *Service Employees Local 254 (Women & Infants Hospital),* 324 NLRB 743 (1997).

Here the picketing was, I conclude, not designed to cause anyone not to perform his assigned duties. Picketing of the Regional Council building was outside the Council's normal business hours. It was directed to delegates to the Council and those delegates were specifically told it was not a picket line to honor. On the contrary, they were urged to go to the meeting and question Coryell. In fact, a few delegates came out of the building and talked to the pickets, including Tommasina Storino, the individual unlawfully discharged by the Fund in the prior case. Then they went back to the meeting. Though picketing can certainly be a signal to employees not to work, here such was not the object nor did it have that effect. Thus I conclude that the picketing did not "induce or encourage" any employee within the meaning of Section 8(b)(4)(i).

Second, to have a violation of Section 8(b)(4)(ii), coercion beyond mere picketing must be proved. As the Supreme Court noted in *DeBartolo v. Florida Coast Building Trades Council,* 485 U.S. 568, 578 (1988), "induc[ing] or encourag[ing] employees of the secondary employers to strike is proscribed by §8(b)(4)(i). But more than mere persuasion is necessary to prove a violation of § 8(b)(4)(ii)(B): that section requires a showing of threats, coercion, or restraints." I find nothing in the flyers, the picket signs, or the comments by picketers to the arriving delegates to amount to threats, coercion, or restraints.

In addition, for there to be a violation of Section 8(b)(4), the activity complained of must be secondary. *NLRB v. Denver Building & Construction Trades,* 341 U.S. 675 (1951). That is, the employer whose employees are induced or encouraged must be a neutral to the dispute between the picketing union and the employer of the employees it represents. Indeed, the proviso to

Section 8(b)(4) states: "that nothing in contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing." To have a violation of Section 8(b)(4), it is necessary that the General Counsel prove that an object of the activity was to cause the "secondary" employer (the Regional Council) to cease doing business with the "primary" employer (the Fund). The General Counsel has not shown how such an object is even possible under the facts here. The Fund is a creature of the Regional Council. Its sole reason for being is to administer benefits negotiated by member of the Regional Council. Unexplained is how the Regional Council could cease doing business with the Fund.

Counsel for the General Counsel states that the Regional Council "is clearly a neutral employer not involved in the dispute with the Fund and the Respondent." (GC Br. at 15.) I disagree. I conclude that Regional Council is not a neutral in this dispute. It is clear, indeed undisputed, that the Respondent's activity on July 16 was directed at Coryell at a time and place where he was physically present. It is equally clear, and undisputed, that Coryell was a principal official of the Fund and it is he who appoints the other union trustees. The Fund is a trust established by members of the Regional Council whose sole purpose for being is to provide health and welfare benefits to employee members of the various constituent union of the Regional Council. The Fund and the Council occupy adjoining buildings, with an interior access and employees of the Regional Council work jointly with the Fund to promote its business. For instance, Robert Pierce, Coryell's assistant is responsible for helping the Fund to collect delinquencies from employers. One half of the Fund trustees are officials of the Council and/or its members.

Finally, the picketing and handling were directed to delegates of the Council with the clear intent that those delegates would question Coryell. While some delegates are employees of constituent unions, there is no evidence that any employee of an employer was induced or encouraged not to work or that any person engaged in commerce or an industry affecting commerce was restrained or coerced. The delegates as delegates are neither employees nor persons engaged in commerce. And it was the delegates to whom the handling and picketing were directed. The activity here was more analogous to picketing a corporate stockholders meeting than picketing a true neutral employer who could bring pressure on the primary by ceasing to do business with the primary.

In short, I conclude that the picketing here was primary and not unlawful. I conclude that a violation of Section 8(b)(4)(i) and (ii)(B) of the Act has not been established and I shall recommend that the complaint be dismissed.

ORDER

The complaint is dismissed in its entirety.